IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7022 OF 2002

Geeta Amrej Singh .. Petitioner

Versus

The President Vidya Prasarak

Mandal and Ors. .. Respondents

Mr.N.V.Walawalkar i/b. Gauri Godse for petitioner

Mr.R.S.Apte for respondent Nos. 1 and 2.

CORAM : S.C.DHARMADHIKARI, J.

DATE : DECEMBER 16, 2004.

P.C.

. Petitioner is invoking the jurisdiction of this Court under Article 227 of the

Constitution of India to challenge that part of the order of the learned Presiding Officer of the School Tribunal, Navi Mumbai where after setting aside the termination order and reinstating petitioner in service, claim for backwages has been denied. Relief of backwages which normally follow relief of reinstatement consequent upon quashing of termination order has not been granted in this case.

2. The grievance made by Mr.Walawalkar, learned Counsel for petitioner is that the Presiding Officer does not assign any reason as to why the normal relief of reinstatement followed by backwages and continuity of service is not granted in this case. Although, petitioner has been reinstated in service by the management, according to Mr.Walawalkar, Presiding Officer’s order to the extent it denied relief of backwages is unsustainable. He submits that the relief of backwages could be denied, if it is

demonstrated to the Tribunal that the employee concerned has been gainfully employed after his service has been put an end to by the employer. In the instant case, there is no evidence to indicate that the petitioner was gainfully employed and that is not even the reason assigned in the impugned order. He, therefore, submits that this is a fit case where reinstatement should have been followed by direction to pay backwages.

3. Mr.Apte, learned Counsel appearing for respondents, on the other hand brings to my notice the fact that the order in appeal was delivered by Presiding Officer on 31st May 2002. Petitioner was reinstated in service on 10th July 2002. At that time the petitioner did not make any claim for backwages. She accepted reinstatement without any complaint and thus she has waived her right to claim backwages. He submits that the school being an aided school, in

any event, the burden should not be placed on the management.

4. Mr.Apte could not point out to me anything by which it can be said in the facts and circumstances of the present case that acceptance of reinstatement would amount to waiver of the right to claim backwages. Ultimately, petitioner is aggrieved by the denial of this relief by the Tribunal. Order of Tribunal is always amenable to writ jurisdiction of this Court under Article 226 and 227 of the Constitution. It is well settled that there is no estoppel against Constitution. Nobody can be called upon to waive his right to approach for redress a constitutional court.

5. I have perused, with the assistance of learned Counsel, the impugned order. After declaring that petitioners services were terminated illegally and she is entitled to

reinstatement, no reasons have been assigned by the Presiding Officer for denying the backwages. All consequential benefits have been granted to the Assistant Teacher but relief of backwages has been denied although, it is not brought on record that she was gainfully employed elsewhere.

6. In my view, considering the facts and circumstances of the present case, interest of justice would be served if the order of Presiding Officer is substituted by grant of relief of backwages to the extent of 50%. Needless to observe that the school being an aided school, it will be for the authorities to reimburse to the Management the backwages. Petitioner would be entitled to the backwages at the aforesaid rate from the date of termination till the date of reinstatement.

7. Rest of the order of Presiding Officer is not interfered with. The order pertaining to

backwages shall be complied with within a period of 12 weeks from today. Petition, accordingly, is disposed of.

8. Mr.Apte, learned Counsel appearing for respondent Nos. 1 and 2 makes a statement that within this period the management will forward pay bills to the sanctioning authority. In the circumstances, there will be no costs.

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